

a) Family Foster Homes and Agency Boarding Homes:

The regulatory language in this standard is very brief.

The placement of a child in a foster family home or an or an agency boarding home shall be considered placement at an appropriate level for the purposes of this Section, if the services required by the child's Initial Service Plan or most recent Comprehensive Services Plan are available to the child as part of the placement

The effect of this provision is simply that placement at this level will not be questioned, if the child is receiving the services planned for him. The provision of appropriate services is the primary concern, and once that has been assured, the Department is committed to the least restrictive setting possible. Therefore, when appropriate services are being provided, there is no reason to question placement at the least restrictive level possible.

b) Group Homes and Group Residences

The regulations for defining appropriate placement in group homes and group residences focus on two factors: the child's age and the child's service needs.

Standard: The placement of a child in a group home or group residence shall be considered placement at an appropriate level of care for the purposes of this section only if:

- (a) the child is ten years of age or older and the necessity of the child's placement is based, in whole or in part, on one or both of the reasons described in paragraphs (B)(3)(e) and (f) as Child Service Needs or Pregnancy; and
- (b) the services or supervision needed by the child cannot currently be provided in a foster boarding home setting.

Documentation: The first Assessment Summary required after the placement of the child in the current setting shall show the child's age and adequate documentation of the necessity of placement, and shall specify the services needed by the child which cannot be provided in a Family Foster Home or Agency Boarding Home.

The standard of this paragraph notwithstanding, the placement of any child ten years of age or older in a group home or group residence shall be deemed placement at an appropriate level even when the services or supervision needed by the child which

cannot be provided in a foster boarding home setting cannot be specified, if one or more previous placements in Family Foster Homes or Agency Boarding Homes have been terminated due to the child's refusal to stay in the home or the foster parents' refusal is due to the child's behavior. In this event, the first Assessment Summary required after the placement of the child in the current setting shall describe the previous placements and the reasons for their terminations.

The standard of this paragraph notwithstanding, the placement of any child in a group home or group residence shall be deemed placement at an appropriate level if such placement is necessary for the child to remain with his mother and/or siblings. In this event the first Assessment Summary required after the placement of the child in the current setting shall indicate:

- (a) that the child or his mother requires foster care due to Pregnancy, as defined in paragraph (B)(3)(b); or
- (b) that one or more siblings requires care in a group home or group residence and that it is in the best interests of the child to maintain him or her with his or her siblings.

The standard of this paragraph notwithstanding, the placement of any child ten years of age or older in a group home or group residence, shall be deemed placement at an appropriate level for the purposes of this Section, if the child has been a victim of incest and this is shown in the first Assessment Summary required after the placement of the child in the current setting to be one of the reasons for placement.

The standard notwithstanding, the placement of any child ten years of age or older in a group home or group residence shall be deemed placement at an appropriate level, if the first Assessment Summary required after the placement of the child in the current setting shows that the parents resist placement of the child in a foster family home or agency boarding home, that the group home or group residence would provide better access to the parents than would a foster family home or agency boarding home, that the child's permanency planning goal is "discharge to parents", and that the district Commissioner of Social Services or his or her representative, which representative shall not hold a rank less than that of Director of Social Services, has approved placement in this setting. The Commissioner or his or her representative shall not approve such placement without having received the advice of a panel consisting of one employee of the Social Service district, one person experienced in child welfare services but not presently employed by either the district or the agency in whose care the child is placed, and one person representing the public who is not currently employed in child welfare services.

The general intent of this standard is to ensure that placement outside of a family foster home or agency boarding home occurs only when there is a child service need which cannot be met in those settings. As was noted in the background section of this directive, if a child is placed solely due to a service need of the parent, there can be no child service need sufficiently serious to justify placement at the more restrictive level.

The paragraph dealing with failed placements does not mean that a failed placement must have occurred before a group home or group residence placement can be made. It means rather that a failed placement is sufficient justification for group placement, if the caseworker is unable to specify what services or supervision are needed by the child that would require such placement but still believes that such placement is appropriate. Again, note should be taken of the difference between what these standards permit and what is best for an individual child. Not every failed placement should result in placement in a group home or group residence.

The paragraph dealing with incest is also one that permits more than may be actually justified in an individual case. The focus should be here on the level of intimacy that a victim of incest can tolerate. While there are certainly other reasons for which a child may be unable to tolerate a great deal of intimacy, this is a very clear case and is the only one included in these regulations. Other such cases will fall under the exception process outlined below.

The paragraph dealing with the parents' acceptance of a foster family home setting is family straightforward, except for the reference to local district commissioner approval. Because this is one instance of a broader exception process, the details of this process will be discussed more fully at the end of this section.

c) Institutional Placements

The standard for placement in institutions is both simpler and more rigid than that for group homes and group residences.

Standard: The placement of a child in an institution, as defined in Part 442 of this Title, other than a group residence, shall be considered placement at an appropriate level for the purposes of this Section only if the child is twelve years of age or older, and

- (a) the necessity of the child's placement is based, in whole or in part, on one or more reasons described in paragraph (B)(3)(e) as Child Service Need; and

- (b) if services or a level of supervision are needed by the child which cannot currently be provided in any other level of care and which can be provided in the institution in which the child is placed.

Documentation: The first Assessment Summary required after the placement of the child in the current setting shall show the age of the child, adequate documentation of the necessity of placement, which services or level of supervision needed by the child cannot currently be provided in any other level of care, and efforts to obtain necessary services or supervision in a less restrictive level of care.

Again, it should be emphasized that this standard does not apply to group residences, even though the latter are considered to be institutions.

Perhaps the most important point to make regarding both this standard and those for group homes and group residences is that the documentation requires the worker to show that the appropriate services could not be offered at lower levels of care. This is already a requirement of the Uniform Case Record, and now it is included in Utilization Review. It means that it is not sufficient to show that the appropriate services can be offered in a restrictive setting in order for that setting to be considered appropriate. The Department's commitment to least restrictive settings means that placement at a restrictive level of care is justified only when the child's service needs cannot be met in any other way.

d) Supervised Independent Living

The Department recently promulgated regulations permitting the establishment of supervised independent living programs, and the utilization review process takes account of these programs and their requirements.

Standard: The placement of a child in supervised independent living shall be considered placement at an appropriate level for the purposes of this Section only if the child:

- (a) is at least 16 years of age and has been in the care of the authorized agency operating the program three months before entering the program, and
- (b) has a permanency planning goal of "Discharge to Independent Living," and
- (c) will be discharged from care within twelve months after placement in the program and has an established Discharge Service Plan.

Documentation: The Comprehensive Services Plan - Child shall show that the child is at least sixteen years of age and has been in the care of the authorized agency at least three months before placement in supervised independent living, that he or she has a permanency planning goal of "Discharge to Independent Living," and the Discharge Services Plan shall show that the anticipated discharge date is no later than twelve months after the placement of the child in supervised independent living.

Since these regulations merely repeat the requirements for supervised independent living programs, no new requirements are being imposed.

4) Court Orders

This provision is similar to the court order provision under necessity of placement. The difference here is that the court must order the child into a particular setting or into a particular level of care, before the above standards are waived. If the court simply orders the child into foster care and the district has the option of choosing which setting, the requirements for appropriateness of placement must be met.

The technical requirements of this section mirror those discussed earlier for necessity of placement. The Assessment Summary must contain either a copy of the court order or a description of the date and conditions. In addition, if a utilization review has found the placement inappropriate, a petition for re-hearing must be filed by the district within 30 days of the notification of the finding.

5) Exceptions

The exceptions for this part of the regulations involve exceptions to the age limits. The first ensures that the placement setting of any child who was placed in that setting prior to the effective date of the regulations, April 1, 1982, will not be disrupted by the age requirements. So long as these placements meet the other requirements of this section, they will be considered appropriate until March 31, 1984. By that time, it is hoped that the extensive service needs of these children can be met in less restrictive settings; and even if the necessary development of services cannot take place in that time, districts are given two years in which to find other placements or seek exceptions.

The second exception clause is much more complex.

Notwithstanding any other provision of this Section, the placement of a child under ten years of age in a group home or group residence and the placement of a child under twelve years of age in an institution other than a group residence shall be deemed necessary and excepted from the age standards, as defined in subparagraphs (C)(3)(b) and (C)(3)(c), only if:

- a) the child's service needs, as documented in the Initial or Comprehensive Services Plan - Child, require:
- (i) sufficient supervision that professional staff are required who are awake and on duty twenty-four hours per day, where professional staff shall include all those whose primary responsibility is to supervise, teach, provide therapy to, or otherwise deal directly with the children, and
 - (ii) at least three of the following:
 - .intensive therapy from a licensed psychologist or psychiatrist or a certified social worker;
 - .for a group home or group residence on-site medical staff on a daily basis and for institutions on-site medical staff at least sixteen hours per day;
 - .a licensed speech pathologist;
 - .a licensed physical therapist;
 - .any other licensed or certified therapist;
 - .on-site educational services;
 - .structured recreational therapy; and
- b) The group home, group residence, or institution has been granted written approval to care for children of these ages by the Commissioner of the State Department of Social Services or by his or her representative, and the review of the agency's program which precedes this approval includes consideration of the ratio of staff to children in care, or
- c) if the conditions in paragraphs (a) or (b) of this subdivision are not met but the placement has been approved by the district Commissioner of Social Services or by his or her representative, which representative shall not hold a rank less than that of Director of Social Services, and if such approval has been made with the advice of a panel consisting of one employee of the social service district, one person experienced in child welfare services but not presently employed by either the district or the agency in whose care the child is placed, and one person representing the public who is not currently employed in child welfare services.

What this long and complex provision says can be boiled down into two processes: first, a process by which the service needs of individual children are documented and the children placed in approved facilities; and second, a process for obtaining an exemption from the age standards through an administrative review

In the first of these processes, two types of service needs must be demonstrated. The first has to do with showing that the child needs 24-hour supervision by professional staff. The second requires that the child need and receive three of the seven services listed. It should be emphasized that the requirement for these services are not met simply by the availability of these services in the facility; rather, it must be shown that the child needs the services.

The second part of this process involves an approval by the State Department of Social Services of individual facilities to deal with young children. If the child's service needs have been documented consistently with the above requirements and the child is placed in an approved facility, the placement will be considered appropriate.

The second process, exemption through an administrative review, comes into play when either the child's service needs do not meet the criteria outlined above or the facility is not approved for dealing with young children. If the district believes that the child should nevertheless be placed in that particular facility, an exemption may be granted. The district commissioner of social services may himself approve the exemption, if he has received the advice of a panel consisting of at least three persons with the qualifications outlined in the regulations. The commissioner need not follow that advice, but he/she must hear it. If such a panel is not used for the particular case in question, the district must request an exemption from the State Commissioner of Social Services. Because basic responsibility for the placement of the child is in the hands of the district, voluntary agencies may not seek exceptions directly from the State Commissioner.

D) Diligence of Effort

This section is concerned with the success the district achieves in discharging children from care. The primary focus is on discharge to parents and discharge to adoption, but standards are also included which are designed to ensure adequate discharge plans for children who are to be discharged to independent living or to adult residential care.

These standards bring into focus an aspect of foster care services that is different from that emphasized in the previous sections. Earlier, the focus was on deciding how best to serve each child and his family, whether the service should be preventive service or foster care, and, if foster care is chosen, which setting is most suitable for the particular child involved. Now the focus turns to the kinds of efforts that must be made to end the placement, and what the results of these efforts are.

The standards for diligence of effort are divided into five parts:

- a) general requirements,
- b) discharge to parents,
- c) discharge to adoption,
- d) independent living, and
- e) adult residential care.

1) General Requirements

The general requirements for this section are more extensive than those for the previous utilization review questions. The basic documentation framework remains the same, but there are also four additional standards which apply at all foster care cases.

1) Consistency

Standard: The Uniform Case Record shall demonstrate consistency among the service needs identified as contributing to the child's need for placement, the goals and services planned for to meet these needs and the services which are provided to the child, members of his or her family or other significant resource persons.

Documentation:

- (1) If the child's placement is deemed necessary, due at least in part to a reason described in paragraphs (a) through (d) of subdivision (B) as Health and Safety of Child, Parental Refusal or Surrender, Parent Service Need, or Parent Unavailability, and the child's permanency planning goal is return to parents or relatives, the most recent Comprehensive Services Plan - Family shall contain client goals and services tasks to meet these needs, and
- (2) if the child's placement is deemed necessary due at least in part to reasons described in paragraphs (e) and (f) of subdivision (B) as Child Service Needs or Pregnancy, specific client goals to meet these needs must be contained in the Comprehensive Services Plan - Child, and
- (3) the Goal and Objective Reviews shall show that services have been provided according to the Comprehensive Service Plans for family and child, or that reasonable attempts have been made to provide those services.

The consistency standard simply requires that service needs are met. When a need is identified that is related to placement, services to meet that need must be planned for, and the services planned must be delivered. This is basic casework practice.

b) Service Plan Reviews

Standard: A panel of at least two people shall participate in the development and review of each Comprehensive Service Plan. The panel shall include the case planner and an administrator or other person not responsible for the case management or delivery of services to that case. In addition, efforts shall be made to involve parents in each review by inviting them to attend and conveying the results of each review to parents who are unable to attend. The child shall also be involved if he or she is ten years of age or older, unless there is a reason related to the necessity of placement why the child should not be involved.

Documentation: The Comprehensive Services Plan shall indicate the participants in the case conference, and when the parents and/or child have not participated, the efforts made to involve them in the Plan and to convey the results of the conference to them.

This standard is relatively straightforward. It requires a panel of at least two persons for each service plan review to comply with the new federal Title IV-E requirements. It also requires that parents and older children be involved in the case planning. The level of involvement for the child should be geared to the child's ability to participate, and provision is made for the child not to be involved at all, if the reason for which he/she was placed would make the child's involvement detrimental to him.

c) Casework Contacts

Standard: Casework contacts involving the child, the child's caretakers, the child's parents or relatives, if any, and district personnel shall adhere to the standards mandated in Section 431.15 (76-ADM-100), and, for children with a permanency planning goal of return to parents, such contacts with the child's parents shall continue at least quarterly after the twelfth month in care. Contacts between the caseworker and the parents or relatives shall be scheduled to occur in the home of the parent or relative as often as is practicable, and in no case for less than 50% of the required contacts, unless the parents or relatives specifically request otherwise, or unless the necessity of placement for the child is based wholly on the reason described as child service needs, as defined in paragraph (B)(3)(e).

Documentation: The Progress Notes shall show the extent to which these contacts are occurring pursuant to Department regulations, the location of the contacts and the content of the contacts.

The basic part of this standard is contained in 76 ADM-100, which has been in effect for several years and should be familiar to child welfare staff. The additions that have been made here involve a preference for casework contacts in the parent's home, unless the parents request that this not occur, and an extension of the requirement for parental contact beyond the end of twelve months, if the child has a permanency planning goal of return to parents.

d) Discharge Planning

Standard: For any child 18 or under who is discharged from foster care, the district shall consider the need to provide preventive services to the child and his family subsequent to his discharge.

Documentation: The Assessment Summary, completed upon discharge of the child, or the Discharge Plan, shall show either the recommended type of preventive services and the district's attempts to provide or arrange for these services, or the reasons why these services are deemed unnecessary.

This standard is one of the most important of the general requirements because it attempts to reduce the number of children who are returned to care by ensuring that services needs which continue after placement are met. The determination as to whether preventive services are appropriate should be made according to the standards for preventive services discussed above. However, even in cases where the child and his family do not qualify for mandated preventive services, non-mandated services may be offered.

2) Discharge to Parents

These standards apply to all children whose permanency planning goal is "return to parents or relatives" and only to these children. Regulations define two standards for these cases. The first deals with visiting.

Standard: Districts shall plan for and make efforts to facilitate at least bi-weekly visiting between the child and the parents or caretakers to whom he is to be discharged, unless such visiting is specifically prohibited by court order, or by the transfer of custody agreement, or because the placement that was chosen pursuant to the standards expressed in Section (c)(2) make bi-weekly visitation an impossibility. In the latter case, the district, at a minimum, shall plan for and facilitate monthly visits between the parent and the child. These efforts shall include: (a) provision of financial assistance, transportation or other assistance which is necessary to enable bi-weekly visiting to occur; and (b) follow-up with the parent or relative when scheduled visits do not occur in order to ascertain the reasons for missed visits and to make reasonable efforts to prevent similar problems in future visits. Any act to limit or terminate

visiting for children voluntarily placed in foster care must comply with the requirements set forth in Section 431.13 of this Title.

Documentation: Shall include:

- (a) A Visitation Plan which includes the planned frequency of the visits, any arrangements or assistance necessary to facilitate bi-weekly or monthly visiting, and
- (b) indications in the Progress Notes or in the Visitation Plan of the extent to which visiting has occurred in accordance with the Plan and follow-up efforts when scheduled visiting has not occurred, and
- (c) indications in the Visitation Plan of the grounds for any attempt to limit or terminate visiting rights, including any documents submitted to the court.

Consistent with the Department's commitment to sustain family relationships, the visiting standard is very strict. Bi-weekly visits are required unless that is impossible, and monthly visits must be planned for every case in which the child is to be returned to his parents. This standard does not mean that districts will be sanctioned, if the parents simply refuse to make visits at these intervals, but if this occurs repeatedly or if the parents refuse to agree to a plan of monthly visitation, consideration should be given to a termination of parental rights, assuming that the district has made all of the efforts required of it.

A special visitation problem is presented by children whose parents are in prison. In these cases the court order on voluntary agreement itself should establish the limitations on visiting, assuming that imprisonment will preclude compliance with the standard. However, visiting is still encouraged whenever feasible.

The second standard in this section deals with lack of progress in achieving the discharge of the child, and actually three standards are included under this category.

6) Lack of Progress

Abandonment

Standard: If a parent evidences an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency, so that the child is considered an abandoned child pursuant to Section 384-b of the Social Services Law, and no mitigating circumstances exist, then an action to terminate parental rights shall be initiated within 60 days of the completion of the Goal and Objective Review - Family which documents these circumstances.

Documentation: The Goal and Objective Review - Family shall document the evidence of the parent's intent to forego his or her parental rights and obligations. The Progress Notes shall indicate the date that the petition to terminate parental rights is filed.

Permanent Neglect

Standard: If a parent has failed for a period of one year to substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the child so that the child is considered a permanently neglected child pursuant to Section 384-b of the Social Services Law, and no mitigating circumstances exist, then an action to terminate parental rights shall be initiated within 60 days of the completion of the Goal and Objective Review - Family which documents these circumstances, as specified in Section 431.9 of this Title.

Documentation: The Goal and Objective Review - Family shall document the lack of contact or the parents' inability to plan for the child and the district's attempts to encourage and strengthen the parental relationship. The Progress Notes shall indicate the date that the petition to terminate rights has been filed.

Discharge Time

Standard: Every child with a permanency planning goal of return to parents or relatives shall be returned to his home within eighteen months of the date he was placed into foster care, unless the anticipated discharge date is prior to the end of the twenty-fourth month and the district provides the child and his family with mandated preventive services. The provision of such services shall not be subject to the requirements of Section 430.9 of Department Regulations. In no case shall a child be kept in care more than 24 months, if his permanency planning goal is return to parents or relatives, unless the continuation of such placement is approved by the district Commissioner of the Department of Social Services, or by his or her representative, which representative shall not hold a rank less than that of Director of Social Services, with the advice of a panel of experts, consisting of one employee of the social service district, one person experienced in child welfare services but not currently employed by either the district or the agency in whose case the child is placed, and one person representing the public who is not currently employed in child welfare services. Such approval shall not be given for more than twelve months. Only the State Commissioner of Social Services, or his or her designated representative, may approve continuation in

care beyond 36 months for children with a permanency planning goal of return to parents or relatives, or beyond 24 months when no panel has advised the district Commissioner on this particular case. For children in care prior to April 1, 1982, the date of placement for purposes of this subparagraph shall be deemed to be April 1, 1982.

Documentation: When the child has been in care for 18 months or more and the anticipated discharge date is after the end of the child's twenty-fourth month in care, the most recent Comprehensive Services Plan - Child shall show a permanency planning goal other than return to parents or relatives and shall show client goals consistent with the permanency planning goal chosen. If the child's anticipated discharge date is before the end of the twenty-fourth month, the most recent Assessment Summary shall show that mandated preventive services are to be provided. When the child has been in care for 24 months or more, the most recent Comprehensive Services Plan - Child shall show a permanency planning goal other than return to parents or relatives and shall show client goals consistent with the permanency planning goal chosen, or shall show that the Commissioner of the State Department of Social Services has approved such continuation within the past twelve months, or that the district Commissioner has approved a continuation of care up to 36 months with the advice of a panel.

The first two standards require efforts to terminate parental rights when the child has been abandoned or permanently neglected, and this flows from the Department's commitment to achieve permanency for every child. When permanency cannot be achieved within the child's own family, steps must be taken which should ultimately lead to adoption.

The third standard sets 18 months as the limit for the permanency planning goal of return to parents. At the end of that time, most children should either be home, be close to returning home, or have their permanency goals changed. In the second case, mandated preventive services must be provided. A change in the permanency goal, however, cannot be merely a paper change; it subjects the district to meeting the requirements of the new permanency goal.

For cases which have had this goal prior to April 1, 1982, the date the goal is deemed to be set is April 1, 1982. This provides a full 18 months for the district to make planned efforts for the discharge of these children, before sanctions can occur.

If the district believes that the child should continue preparations for a return to his/her parents, but that discharge cannot be attained by the end of the twenty-fourth month, it should seek an exception to this standard. The exception should be sought immediately after the 18 month service plan review, at the latest, and may be granted by the local Commissioner, with the advise of the panel described earlier, for a period of one year. After the child has been in placement for three years with a goal of return to parents, only the State Commissioner may grant further exemptions.

3) Discharge to Adoption

The standards for children with a discharge goal of adoption are different depending on the current status of the child. Together, the three standards represent the flow of the case as it moves through the adoptive process.

a) Children Not Legally Free

Standard: For children who are not legally free for adoption, an action to legally free the child shall be initiated within 30 days of the establishment of the permanency planning goal of adoption. The child shall be freed within 12 months after the establishment of the permanency planning goal of adoption. For children in care prior to April 1, 1982, the date of placement for purposes of this subparagraph shall be deemed to be April 1, 1982.

Documentation: The Progress Notes shall indicate when the action has been initiated and shall include copies of the petition and any documents submitted in support of the petition or descriptions of the content of the documents. In addition, the date that the child was freed shall be noted in the Progress Notes. If the case does not meet the standard for freeing the child within 12 months, the district shall be considered to be out-of-compliance with the standard unless, at the time of the first recertification after the twelve month period, the Goal and Objective Review - Child shows that a petition to terminate parental rights was filed within 120 days of the date the permanency planning goal of adoption was chosen and the delay was caused solely by the court and not by the district or agency caring for the child, or that the court refuses to terminate parental rights.

There is only one case in which the district will be allowed to take more than twelve months to free the child; namely, when the court is the reason for the delay. This assumes, however, that the district has performed all of the actions required of it in timely fashion, including filing a petition for termination of parental rights within 120 days of the setting of the goal.

b) Children Legally Free

Standard: Children who are legally free for adoption but not in an adoptive home shall be placed in an adoptive home within six months after the child was freed for adoption. For children with a permanency planning goal of adoption prior to April 1, 1982, the date on which the child was freed shall be deemed to be April 1, 1982.

Documentation: The Progress Notes shall indicate when the child was placed in the adoptive home, or if the child was not placed in such home within the time frame stated in the standard, the first

Comprehensive Services Plan - Child after the six month period shall indicate that an attempt shall be made to obtain a subsidized adoptive placement for the child, or record the reason the district believes that subsidy will not be required to complete the adoptive placement before the end of the twelfth month. Failure to place the child in an adoptive home within twelve months from the date he was freed shall constitute non-compliance with this standard, unless the child's permanency goal, as recorded on the Comprehensive Service Plan - Child is other than discharge to adoption, or unless the district Commissioner of the Department of Social Services, or his or her representative, which representative shall not hold a position less than that of Director of Social Services, has approved, with the advice of a panel of experts consisting of one employee of the social service district, one person experienced in child welfare services but not presently employed by either the district or the agency in whose care the child is placed, and one person representing the public who is not currently employed in child welfare services, a continuation of the efforts to place the child in an adoptive home. Such approval shall not be given for more than twelve months. Continuation of the efforts to place the child in an adoptive home beyond twenty-four months, or beyond twelve months when no panel has advised the District Commissioner, may be approved only by the State Commissioner of Social Services or by his or her representative. If an agreement to adopt the child has been signed by the prospective adoptive parents and the prospective parents then refuse to maintain the child in the home or otherwise to complete the adoptive process, as documented in the most recent Assessment Summary, the date of that refusal shall be deemed to be the date on which the child was freed.

This standard is similar to the lack of progress standard for children to be returned to their parents, in that an additional time period is permitted, if increased efforts to effect the discharge are made. Every child who has been freed and in care for six months is eligible for an adoption subsidy, so that extra six months permits use of this option in the attempt to get the child adopted. After twelve months, the case is subject to sanction, unless an exception has been granted or a placement was agreed upon but later dissolved.

3) Children in Adoptive Placement

Standard: For children who are legally free, in an adoptive home, but whose adoptions are not yet final, such adoptions shall be finalized within 12 months after the child is placed in an adoptive home. For children who were placed in an adoptive home prior to April 1, 1982, the date of the placement in that home shall be deemed to be April 1, 1982.

Documentation: The Progress Notes shall indicate the date of finalization or, if the child's adoption was not finalized in the required time frame, the district shall be considered to be out-of-compliance with the standard unless, at the time of the first recertification after the six month period, the Goal and Objective Review shows that the delay was caused solely by the court, and not by the district or agency caring for the child, or that the adoptive parents have delayed the finalization.

Here, the only reasons for exceeding this time frame are delays in the court processes or delay caused by the adoptive parents.

d) Independent Living

The standards in this section are designed to ensure that this discharge objective is chosen only when it is most appropriate, and to ensure that the child is prepared for independent living. The regulations define three standards.

1) Setting of Goal

Standard: The child shall be 14 years of age or older, or be placed in a foster home with a relative of the second degree or closer, for this goal to be established and it shall have been determined to be in the child's best interests that he or she remain in foster care and not return to his or her parents or be adopted until the child reaches the age of 18. No other child shall have a goal of "Discharge to Independent Living" unless the court has refused, after a hearing, to free the child for adoption, or unless that goal is approved by the District Commissioner of the Department of Social Services, or by his or her representative, which representative shall not

hold a position less than that of Director of Social Services, and such approval is granted after receipt of the advice of a panel consisting of one employee of the social service district, one person experienced in child welfare services but not presently employed by either the district or the agency in whose care the child is placed, and one person representing the public who is not currently employed in child welfare services. If the District Commissioner does not receive the advice of such a panel, approval may be given only by the State Commissioner of Social Services or by his or her representative.

Documentation: The first Assessment Summary required at the time of the selection of the permanency planning goal shall indicate the reasons for choosing this goal rather than "Discharge to Parents or Relatives" or "Discharge to Adoption" and shall summarize efforts to accomplish either or both of these Permanency Goals before this goal was selected.

2) Preparation for Discharge

Standard: The district shall make plans and take specific actions to provide training for the child in independent living skills such as apartment finding, budgeting, shopping and cooking. In addition, the district shall make plans and take specific actions to ensure training for the child directed toward career objectives, such as training in a marketable skill or trade, counseling around career choices, and assistance in locating or enrolling in appropriate programs. These actions and plans shall begin at the time at which this goal is selected or by the child's fourteenth birthday whichever is later, and shall continue without interruption until the child is discharged.

Documentation: Documentation of preparation for independent living shall include Goals and Services in the Comprehensive Services Plan - Child which are directed toward this end, and the actions taken to implement these plans, and their results, shall be documented in the Goal and Objective Review - Child.

3) Discharge

Standard: For each child discharged to independent living, the district shall identify any persons, services, or agencies which would help the child maintain and support himself and shall assist the child to establish contact with such agencies, service providers or persons by making referrals and by counseling the child about these referrals prior to discharge. This shall include efforts to assist the child to re-establish contacts with parents, former foster parents or other persons significant to the child.

Documentation: Documentation shall include Goals and Services in the Comprehensive Services Plan - Child and a summary by the district of the efforts made and their results in the Goal and Objective Review or Discharge Plan.

Fourteen was chosen as the minimum age at which a child can be given this permanency goal, unless he is in a kinship home, because this is the youngest age at which a child may legally refuse to be adopted. Until that time, other permanency goals must be pursued, unless an exemption has been granted for a particular case.

When a child is released to independent living, the foster care parent or agency has done more than provide a minimum level of care and protection for the child; it has replaced the parents in preparing the child for adulthood. These standards attempt to ensure that this responsibility is carried out. They do not require that every agency have vocational schools, but they do require that linkages be created to services which will assist the child in preparing for adulthood.

e) Adult Residential Care

These standards are similar to those for independent living both in their content and in their intent. However, there is no minimum age for this discharge objective because the setting of the goal is based on service needs of the child which may be identified at an early age.

The following requirements shall pertain to all children in a foster care placement whose permanency goal is "Discharge to Adult Residential Care."

1) Setting of Goal

Standard: Discharge to Adult Residential Care shall be the permanency planning goal only for children for whom the necessity of placement is based in whole or in part on the reason described in paragraph 430.10(c)(5) as "Child Service Need" and for whom the service needs arises out of a factor other than the child's behavior. For each child with this goal, the district shall consider alternative Permanency Goals, including "Discharge to Parents or Relatives" and "Discharge to Adoption" before this goal is chosen, and the Director of Social Services shall review and approve the establishment of this goal.

Documentation: The Comprehensive Services Plan - Child shall document the specific reasons why this is the most appropriate Permanency Goal for this child and the reasons why the child should not be discharged to parents or relatives or to an adoptive placement.

2) Preparation for Discharge

Standard: For each individual discharged to adult residential care, the discharge plan must include the types of services and programs needed by this individual, specific programs which could meet the individual's needs, and plans and activities to assist the child in making the transition from the present program to the new program.

Documentation: Documentation shall include Goals and Services in the Comprehensive Services Plan - Child which will assist with the transition and a summary by the district of the efforts made and their results in the Goal and Objective Review.

The first standard is designed to ensure that this goal is used only for children who will never be able to live in the community. The second provides for the maximum degree of continuity possible in the services which are provided to these children.

f) Court Orders

Again, no sanction will be levied where a court has ordered actions inconsistent with these standards. However, the same requirements for petitioning for a re-hearing are applicable in this section, as applied in earlier sections.

IV. REQUIRED ACTION

Beginning April 1, 1982, each district must ensure that all foster care and preventive service cases are in compliance with these cases. The first reviews of these standards will begin in July, 1982, and any case out of compliance at that time will be denied reimbursement from the Department from the date of the review until the date the case is brought back into compliance. The denial will include both State and Federal funds. The denial of reimbursement, however, shall not relieve either the district or the agency from which the district has purchased foster care or preventive services, from statutory or contractual obligations to continue to provide such care or services for the child or other children in its care or for the child and his family in receipt of such services.*

Any social services district which is denied reimbursement due to a violation of any of the standards in this Directive is required to charge the loss to the agency or agencies which provide the services, to the extent that the violation is attributable to the action of such agencies. There must be a clear description in every contract of the respective responsibilities of the agency and the district. In order to facilitate the development of these contracts, the Department will send out model contract language in the near future that may be used in defining the various responsibilities.

*In addition, the denied claims will court towards the district's foster care apportionment amount, as described in 81-ADM-53.

Obviously, the district may not charge a loss of reimbursement to an agency for its own administrative or direct service costs. Moreover, there are certain decisions for which a district alone is responsible, and for which a violation cannot result in a loss to the agency. These include the decision that a family is a mandated preventive services case, that a child should be placed or continued in foster care, and that a child should be placed in a particular setting in foster care. To the extent that the voluntary agency is responsible for documenting the reasons for these decisions, and fails to do so properly, it may be denied reimbursement. It may not be denied reimbursement, however, for the decision itself.

The documentation requirements in these standards are of two types. First, there is documentation of the needs of the child and the family. This is actually part of the assessment and therefore more than just documentation. When this type of documentation is lacking, sanctions will be imposed.

Second, there is documentation of concrete actions, e.g., providing preventive services prior to placement, or making in-home contacts with the family. If the initial finding of a review shows no documentation of these requirements, a sanction will be imposed. However, the sanction will be voided and reimbursement will not be denied, if the district can show that the actions were in fact accomplished.

Districts and agencies aggrieved by the denial of reimbursement are entitled to fair hearings to appeal such denials. The fair hearing for the district must be requested within 60 days of the date the written notice that reimbursement will be denied is sent by the Department. Such hearings will decide whether the denial of reimbursement is appropriate.

Agencies requesting fair hearings must do so within 60 days of the date of the written notice that loss of reimbursement will be charged to the agency is sent by the district. These appeals should focus not on whether a standard has been violated, but rather on whether the agency itself acted pursuant to the standards in this Directive and to its contractual obligations.

Because the statute limits the denial of reimbursement to reimbursement under Sections 153 and 409-b of Social Services Law, juvenile delinquents (JD's) and persons in need of supervision (PINS) cases may not be denied reimbursement pursuant to this provision of law. When such cases are in the custody of the Commissioner, however, they are nevertheless deemed to be subject to these standards, and the contract between the agency and the district should provide for a division of responsibilities on these cases that will ensure compliance with these standards. In addition, a number of these standards reflect directly or indirectly new federal guidelines which the State must meet in order to qualify for reimbursement under Title IV-E of the Social Security Act. In the event of a denial of federal funds to the State, the loss of reimbursement will be charged to the district and/or agency responsible, when that denial is a result of a violation of any of these standards. This includes JD and PINS cases.

The statute provides for a sampling of cases during the reviews on these standards, and, in addition to denials of reimbursement for specific cases, requires percentage sanctions in some situations. The regulatory language is as follows:

- a. The Department shall, in accordance with generally recognized statistical sampling methods, review a sample of individual case records of children in care or in receipt of preventive services and other relevant data and information compiled or kept by the Child Care Review Service, social services districts and agencies from which such districts purchase foster care or preventive services to determine whether foster care or preventive services have been provided in accordance with the standards set forth in Sections 430.9 through 430.12. In addition, the Department shall, in a subsample of the cases under review, conduct on-site agency interviews with the child to determine the validity of statements in the case record. Such interviews shall be conducted with the consent and in the presence of a representative of the agency. If the Department finds, in a portion of the sampled case records, that care or services have been provided in violation of such standards, it shall deny reimbursement thereon in accordance with the provisions or paragraph (2) of this subdivision.

- b. If the Department finds that care or services have been provided in violation of the standards set forth in Sections 430.9 through 430.12 in a portion of the sampled case records, which portion exceeds seven and one-half per centum of the entire sample it shall attribute that portion of the violation which exceeds seven and one-half per centum of the entire sample to the entire foster care or preventive services caseload from the date of the review to the date of full compliance of 92.5% of the sample cases and the Department shall deny reimbursement thereon in accordance with the provisions of this Section. Beginning four months after the date of full compliance for 92.5% of the sample cases, the district in question shall begin a second review of an equal size sample drawn by the Department. This review shall use the Department's guidelines and protocols, and Department staff will review a subsample of the cases. If the district's and the Department's results agree in at least 90% of the subsample cases, the district's results for the full sample will be considered valid. Otherwise, the Department will conduct a review of the entire sample and the results of that review will be used. If on this second review, whether performed by the district or by the Department, more than 7.5% of the cases are out of compliance, the percentage above 7.5% will be applied to the foster care or preventive service caseload not reviewed, and reimbursement will be withheld retroactively to the date on which the previous sanction ended. This process shall be continued until a review is conducted which shows no more than 7.5% of the cases to be out of compliance. In such event the social services district may perform such audits of agency records and other reviews as may be appropriate for the purpose of determining whether such loss of reimbursement may be attributed to another agency in accordance with subdivision (c).

of this Section. This paragraph shall remain in effect until September 30, 1983.

This procedure, while complex, is designed to ensure that denials of reimbursement are as minimal as possible. No denial will be retroactive to any time prior to the review, except where a district has had two consecutive reviews with more than 7.5% of its caseload out of compliance.

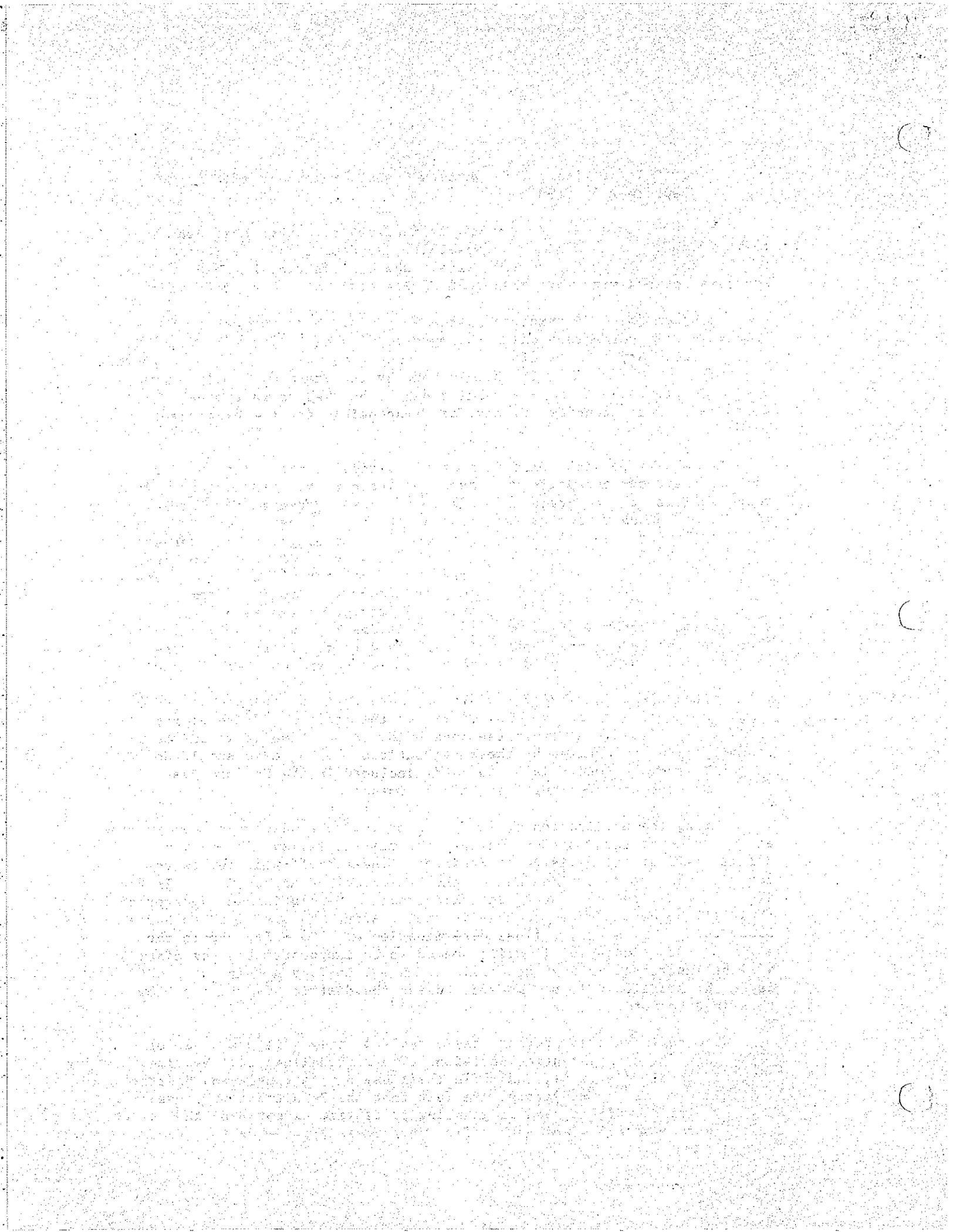
In order for a district to charge a loss of reimbursement to an agency on this percentage basis, as opposed to a case specific basis, it will be necessary for the district to conduct its own study of the agencies with which it contracts. The sample used by the State will only be valid at the district level, so the results cannot be used to determine adequately which agencies, if any, are responsible for the high error rate.

As soon as possible districts should decide whether they wish to conduct their own exception processes, or whether they wish to leave that responsibility to the State. In the former case, arrangements should be made to establish review panels, so that the reviews can be conducted in a timely manner. In all cases the exception must be granted or denied prior to the first date on which documentation is required to show compliance with these standards. In order to facilitate efficiency, several districts may agree to use the same panel members or to draw from a common pool of panel members. However, in any given review by a panel, the district member must be employed by the district which has jurisdiction over the case. The Department will send to all districts in the near future a suggested guide as to how to set up and work with a panel.

In the event the district wishes to have the Department grant exceptions, all documentation should be sent to the regional office of the Division of Services at least ten days prior to the time at which the documentation is required by these regulations. In no case should documentation be required which is not already included in the Uniform Case Record and the accompanying case file documents.

During the utilization review process, any case which has been granted an exception by the district commissioner must be reviewed by regional office staff of the Division of Services. These staff will review the case in order to determine whether the exception was appropriate. In the event that the regional staff determine that the exception was appropriate, this will be communicated to the district. After the district has had an opportunity to respond, a final determination will be made, and in the event that the exception is still deemed to be inappropriate, the district will be instructed to move the child to an appropriate setting within 60 days. No sanction will be imposed, unless the district fails to follow this instruction.

When regional staff perform these reviews, they will use a set of guidelines for each exception decision. These guidelines will be distributed to all districts, and while their use by the panels and district commissioners is not mandatory, the fact that the Department will use them in reviewing exceptions, and in granting or denying exceptions, their use will ensure a smoother and more efficient process state-wide.



In some cases it may be appropriate to seek an exception well before the date at which a case would be out of compliance without an exception. Cases in which a child would need to be stabilized emotionally before being prepared to go home or be adopted would qualify here. In this instance, exceptions to the standards dealing with the permanency goals could be given at the time of placement and later lifted, so that in effect the clock would start on the time limit standards after the exception ended. The suggested Department guidelines will encompass these cases.

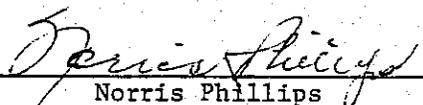
The agencies which wish to accept children under ten years of age in group homes or group residences or children under twelve years of age in institutions other than group residences should request that approval be given to them for this purpose as soon as possible. The request should be made in writing to:

Norris Phillips
Deputy Commissioner
Division of Services
Department of Social Services
40 North Pearl Street
Albany, New York 12243

Approvals, when granted, will be retroactive to April 1, 1982.

V. EFFECTIVE DATE

This Directive shall take effect on April 1, 1982.



Norris Phillips
Deputy Commissioner
Division of Services



